IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.29848 of 2004

and

WPMP.NO.563 of 2005

S.Lazer ... Petitioner

Vs.

1.The Addl.Director General of Police (L&O),
Cheenai- 600 004.

2.The Deputy Inspector General of Police,
Tirunelveli Range,
Palayamkottai,
Tirunelveli

3. The Superintendent of Police,
Nagercoil,
Kanyakumari District ... Respondents

* * *

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari as stated therein.

* * *

For petitioner : M/s.I.David Singh
For respondents : Mr.C.Thirumaran

* * *

WEB COPY

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorari to call for the records relating to the order passed by the first respondent in RC.No.253520/PR.II(1)/ 2003, dated, 03.02.2004 and quash the same.

https://hcservices.ecourts.gov.in/hcservices/

2.Heard the learned counsel for the petitioner as well as the respondents.

3.The brief facts of the case, as stated by the petitioner, are as follows:-

The petitioner was appointed as 1st Grade Police Constable in Kanyakumari District on 01.02.1972. He had joined in duty after completing his training in the police recruitment school at Coimbatore and served in various police stations in Kanyakumari District . On 31.05.1985, he was promoted as a Head Constable. Later, on 01.06.1998, he was promoted as a Special Sub-Inspector of Police. On 13.01.2003, the petitioner along with a first Grade Women Constable T.Pitchi, reported before Superintendent of Police, Kanyakumari District, in connection with the medical examination of women candidates selected for the post of Grade-II Police Constable. All the candidates had brought for medical examination before the Dean of Medical College Kanyakumari District at Nagercoil and completed his duty. While he was taking the candidates for eye check up on 14.01.2003 to the T.B.Hospital, Asaripallam, he was served with a suspension order passed by the third respondent for a charge under Rule (3b) of Tamil Nadu Police Sub-ordinate Service (D&A) Rules 1955 in P.R.No.12/2003 for alleged corrupt practice of collecting an amount of Rs.28,200/- from 94 candidates for the post selected for Grade-II Police Constable while subjecting them medical examination by engaging one Ravi Stephen.

4. The Petitioner was asked to attend the enquiry based on the charge memo dated, 19.02.2003. The third respondent had appointed the Deputy Superintendent of Police of Kanyakumari District as an Enquiry Officer and files his report stating that the charges alleged against the petitioner were not proved. The petitioner had further submitted that the order of suspension based against the petitioner was revoked by the third respondent and he was asked to join duty vide D.O.No.421/2003, dated, 02.07.2003. Accordingly, the petitioner had joined duty on 03.07.2003. However, the third respondent had sent a dissenting note on 14.07.2003 for which the petitioner had given a reply on 25.07.2003. On 06.08.2003, the third respondent , without considering the explanation submitted by the petitioner, passed an order dismissing the petitioner from his service. Aggrieved by the order of the third respondent, the petitioner had filed an appeal before the second respondent in C.No.C1/AP103/2003, dated, 13.08.2003. The second respondent had rejected the petitioner appeal on 03.11.2003. Therefore, the petitioner was constrained to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

file a review petition before the first respondent in R.C.No.253520/PR.II(1)2003, dated, 22.11.2003. The review petition had also been rejected. Hence, the petitioner filed the present writ petition.

5. It is submitted that on behalf of the petitioner that even though the Enquiry Officer had found the charges framed against the petitioner has not proved, the Disciplinary Authority, the Superintendent of Police, Nagercoil, Kanyakumari District, the third respondent herein had awarded the punishment of dismissal from service. The punishment of dismissal from service by his order, dated, 06.08.2003. Based on his dissenting note, dated, 14.07.2003, stating as follows:-

> " 8. I have given much weight to the statements of PWs 1 to 7, PW.10 given before the preliminary Enquiry Officer and the report of preliminary Enquiry Officer i.e.PW.11 and the exhibits filed by them an Ex.P1 to P7, Ex.P13 and P14 and the charge against the delinquent is "PROVED" under preponderance of probability as per the various rulings made in various Judgments quoted above.
>
> 9. As the delinquency is a serious one and the Police Personnel who is expected to maintain a high standard of discipline in the disciplined police force has deviated from all cannons of justice and stopped to the level of low dignity and thereby brought discredit to the morale of Police force as well as in the eyes of public, I am constrained to take a serious view and the delinquent SSI. Lazer is awarded with the punishment of "DISMISSAL" from the service.

Aggrieved by the said order, the petitioner had preferred an appeal to the Deputy Inspector General of Police, Tirunelveli Range, the second respondent herein in his appeal petition dated, 13.08.2003. The second respondent by his order dated, 03.11.2003, had dismissed the appeal in his order C.No.C1/AP.103/2003, dated, 03.11.2003, which is as follows :-

> " This is an appeal preferred by Thiru.Lazar, Special SI of Police, Kanyakumari District against the punishment of Dismissal awarded by Supdt.of Police, Kanyakumari District in P.R.12/2003 U/r 3 (b).
> 2.The appeal is within time. The appellant was dealt with for having indulged in corrupt practice by collecting money of Rs.28,200/- (i.e.) Rs.300/- per head from 94 Women Candidates selected for Gr.II, PCs while producing them for Medical Examination on 13.01.2003 at Government College Hospital, Nagercoil on the pretext of giving the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

amount to the Doctors.

3. I have carefully considered the appeal. The charge of collection of illegal gratification from vulnerable candidates yet to enter this department is extremely serious. I agree with the dissenting notes of the punishing authority fully in which he has discussed all the points raised by delinquent officer. He has not furnished any fresh points for consideration either in the further representation to the dissenting notes or in the appeal. I do not find any reason to interfere with the punishment awarded. Hence appeal is rejected."

6. The petitioner has subsequently filed a review petition before the first respondent, by his proceedings R.C.No.253520/PR.11(1)/2003, dated, 03.02.2004, had dismissed the Review Petition " Thiru.S.Lazer, Ex.Special Sub-Inspector of Police of Kanyakumari District was dealt with on a charge u/r.3 (b) of TNPSS(D&A) Rules in PR.No.12/03 for the following delinquency:

" Indisciplinary conduct in having indulged in corrupt practice by collecting money of Rs.28,200/- (i.e.Rs.300/-per head) from 94 Women candidates selected for Gr.II PC while producing them for medical examination on 13.01.2003 at Government Medical College Hospital, Nagercoil on the pretext of giving the amount to the doctors".

2.The Enquiry Officer i.e. Deputy Superintendent of Police , Kanniyakumari who conducted the oral enquiry has held the charge as not proved in his minute dated,16.06.2003.

3.The punishing authority viz.the Superintendent of Police, Kanniyakumari has disagreeing with the findings of the Enquiry Officer and drew dissenting note dated, 14.07.2003 has held the above charge as proved and awarded the punishment of 'dismissal' on 06.08.2003 and he acknowledged the above order on 08.08.2003.

4.His appeal against the punishment was rejected by the Deputy Inspector General of Police, Tirunelveli in Proceedings No.C1/AP.103/2003, dated, 03.11.2003.

5. Now he has preferred a Review Petition dated, 17.11.2003 to me to setaside the orders of dismissal. His review petition is within the time.

6.I have carefully gone through the PR file and connected documents. I agree with the findings

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> of the disciplinary authority who disagreed with Enquiry Officer and awarded punishment of dismissal. His appeal was rejected by the Deputy Inspector General of Police. He has not made any acceptable points in the review petition. The fact that only 6 candidates were examined and PW 7 Ravi Stephen turned hostile does not alter the findings. Other points mentioned by him do not disturb the findings, I have no hesitation in endorsing the findings. Taking the gravity of charge into account, he deserves to be inflicted with exemplary punishment and punishment of dismissal is not excessive. His review petition is rejected.

7. The petitioner had filed an O.A. Before the Tamil Nadu Administrative Tribunal , Cheenai, in O.A.No.748 of 2004, which has been subsequently transferred to this Court and re-numbered as W.P.No.29848 of 2004. It is stated that the third respondent had issued a dissenting note dated, 14.07.2003, disagreeing with the findings of the Enquiry Officer, who had held that the charge against the petitioner was not proved. The dissenting note was given based on the deposition given by the prosecution witnesses before the Preliminary Enquiry Officer. The petitioner was provided both the dissenting note and also the minute copy of the enquiry officer on 16.07.2003 and the petitioner had submitted his representation on 25.07.2003. Since the petitioner had not put forth any fresh points for consideration and as they alleged charge against him was a serious nature and as a Police Personnel expected to maintain high standards of disciplinary he was awarded the punishment of dismissal from service by an order dated, 06.08.2003, issued by the third respondent. Against the said order of dismissal, the petitioner had filed an appeal before the second respondent and the second respondent had dismissed the same by an order, dated, 03.11.2003. The review petition filed by the petitioner before the first respondent was also dismissed by an order dated, 23.11.2003, confirming the order of dismissal from service against the petitioner. The third respondent, while passing the impugned order dated, 06.08.2003, had relied on certain decisions of the Supreme Court as well as of this Court and had quoted that the decision of this Court Jarring Mercury Vs The Superintendent of POlice, Coimbatore Urban, reported in 1990 Writ Law Reporter 109, where it was held as follows:-

> "It is settled in Law that disciplinary proceedings is not a criminal trial and the standard of proof required in the disciplinary proceeding is preponderance of probabilities and not proof beyond all reasonable doubt as is required in a criminal trial. Where, therefore, there are relevant

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

materials which can reasonably support that the delinquent employee is guilty of the charges framed against him and those materials have been accepted by the competent authority, it is not the function of the High Court in exercise of its jurisdiction under Art.226 of the Constitution to review the materials and reappraise of reassess the evidence.

8. The third respondent had also relied on the decision of the Supreme Court in Union of India Vs SARDAR BAHADUR (SLR.1972.P.355) , wherein it was held as follows :-

" A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt."

9. He has also placed reliance on the decision of the Supreme Court in State of Haryana Vs Rattan Singh (AIR 1077 SC 1512) wherein it was held as follows:-

" It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility."

Further, he had relied on "J.D.Jani Vs. the Management of SBI (AIR 1982 SC 673) to support his view that circumstantial evidence could be taken into consideration to prove the guilt of delinquent for the purpose of a departmental enquiry.

10. The learned counsel appearing for the petitioner had relied on the decision of the Supreme Court in Narayan Dattatraya Ramteerthakhar VS State of Maharashtra and others reported in 1997 1 SCC 299, where it was held that preliminary enquiry has nothing to do with the enquiry conducted after the issue of the chargesheet. The former action would be to find out whether disciplinary enquiry should be initiated against the delinquent after the full-fledged enquiry is held , the preliminary enquiry had lost its importance.

11. In Union of India and others Vs. Mohd.Ibrahim reported in (2004) 10 Supreme Court Cases 87, the Supreme Court had held as follows:-

"we are of the considered opinion that the order of dismissal was vitiated as the findings has been based on consideration of statement of the persons

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

examined during the preliminary enquiry but the power of the employer to start a fresh proceeding cannot be taken away. Therefore, we dispose of the matter with the observation that it will be open to the competent authority to start a fresh disciplinary proceeding and conclude the same in accordance with law."

12. It is also pointed out that this Court in its order, dated, 23.03.2006, in Writ Petition NO. 27295 of 2005 filed by T.Pitchai vs The Deputy Inspector General of Police, Tirunelveli range and others) against whom an order of dismissal dated, 06.08.2003, had been passed relating to the same charge,had quashed the impugned order holding that the punishment imposed on the petitioner based on dissenting view is unsustainable.. By the said order, the respondents were directed to reinstate the petitioner in service with all service benefits other than backwages. The learned single Judge had relied on the decision of the Supreme Court Union of India Vs Mohd. Ibrahim reported in (2004) 10 SCC 87 in which the Supreme Court had held that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons examined during the preliminary enquiry.

13. It has also been pointed out that Division Bench of this Court by an order, dated, 22.02.2005, in W.P.No.29862 & 32581 of 2002 (The Deputy Inspector General of Police, Villupuram and others Vs V.Vanniaperumal and others) upheld the order of the Tribunal which set aside the order of removal from service. The said conclusion was arrived at by the Division Bench based on the decision of the Honourable Supreme Court reported in 1997 I SCC 299 (Narayana Dattatraya Ramteerthakhar Vs State of Maharashtra and others).The learned counsel for the petitioner had also relied on an order of this Court dated, 15.02.2006, made in W.P.No.27019 of 2005 (B.Bala Murugan Vs The Inspector General of Police, Madurai-2 and Two others) to support his contentions.

14. On a perusal of the records placed before this Court ,and relying on the decided cased cited by the learned counsel for the petitioner , this Court is of the considered view that the order of dismissal passed by the third respondent in P.R.12/2003 u/R 3 (b), dated,06.08.2003 confirmed by the order of the second respondent in proceeding No.C..NO.C1/AP.103/2003 dated, 03.11.2003 and again confirmed by the first respondent in his proceedings proceedings RC.NO.253520/PRII(1)/2003, dated, 03.02.2004 are vitiated for the reason that the impugned orders have been passed on the basis of the statements made during the preliminary

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

enquiry. Even though the enquiry officer had found the charges leveled against the petitioner as not proved after conducting an elaborate enquiry, the third respondent had issued the impugned order dated, 06.08.2003 dissenting from the findings of the enquiry officer. From the decisions of the Supreme Court in Union of India and others Vs. Mohd.Ibrahim reported in (2004) 10 Supreme Court Cases 87, it is clear that the impugned order would stand vitiated, since it was based on consideration of the statements of persons examined during the preliminary enquiry even after fullfledged enquiry had been conducted. However, from the said decision it could be noted that it would be open to the competent authority to start a fresh enquiry on the charges leveled against the petitioner.

15. In such view of the matter, the impugned order of the first respondent, RC.NO. 253520/PR.II(1)/2003, DATED 03.02.2004 is set aside and the respondents are directed to reinstated the petitioner in service with all attendant service benefits except the back wages for the period he was actually out of service, leaving it open to the competent authorities to hold a fresh enquiry, against the petitioner, in accordance with law.

With the above observation, the writ petition stands allowed. Consequently, the connected W.P.M.P is closed. No costs. ssm

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Addl.Director General of Police (L&O),
Chennai- 600 004.

2. The Deputy Inspector General of Police,
Tirunelveli Range,
Palayamkottai,
Tirunelveli

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. The Superintendent of Police,
   Nagercoil,
   Kanyakumari District

+ one cc to the Government Pleader sr no. 63241
+ one cc to Mr. I. Davidsingh, Advocate sr no. 63626

NTK(CO)
NM(10.01.07)

WRIT PETITION No.29848 of 2004

and

WPMP.NO.563 of 2005

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/